Proposed California Energy Commission and California Public Utilities Commission Joint Comments on Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Notice of Proposed Rulemaking

FERC Docket No. RM10-23-000

I. GENERAL ISSUES RAISED BY NOTICE OF PROPOSED RULEMAKING

The California Public Utilities Commission (CPUC) and California Energy Commission (Energy Commission) staffs have comments on several general issues that are central to the Notice of Proposed Rulemaking (NOPR) and are of concern to California. First, the NOPR provides insufficient certainty regarding participation by independent transmission owners/providers in the proposed planning and cost allocation reforms. The participation of independent and merchant transmission developers is important and should be encouraged. This is consistent with the CPUC's position in prior transmission proceedings before FERC.

Secondly, the NOPR also proposes new federal regulations in areas such as multi-area transmission planning, and cost allocation. With regard to these issues, the CPUC and Energy Commission staffs emphasize (1) the need to respect state jurisdiction, particularly with regards to resource planning and transmission permitting, and (2) that any new regulations that rely on cooperative multi-entity planning and cost-allocation agreements, which are at present voluntary and not directly FERC jurisdictional, should allow for flexibility and take into consideration the varying characteristics of different planning areas.

Thirdly, early public participation in the beginning of the transmission planning process is essential to allow projects to move forward expeditiously from the planning phase to the permitting phase and finally the construction phase. In California, the Renewable Energy Transmission Initiative (RETI) included public participation that was open to all stakeholders including, but not limited to, utility and independent transmission providers, load serving entities, generators, public interest and consumers, environmental groups and permitting agencies. A RETI public participation approach is essential for transmission to be built in a timeframe that will allow California and other states to reach their mandated renewable portfolio standards.

II. COMMENTS ON THE FIVE AREAS OF PROPOSED REFORM

The staffs submit comments on all five major areas of proposed reforms in FERC's NOPR: (1) participation in regional planning processes; (2) consideration of public policy goals in the transmission planning process; (3) reforms to prevent undue discrimination against non-incumbent transmission providers; (4) interregional (*e.g.*,

across the west) transmission planning coordination reform; (5) and transmission cost allocation.

Participation in Regional Planning Processes

FERC proposes establishing a rule that would require all public utility transmission providers to participate in regional planning processes and produce a regional transmission plan consistent with the planning principles established in Order 890. California has already developed a regional FERC-approved transmission planning process implemented by the CAISO, with currently proposed reforms that, if adopted, would address several priorities identified in the current NOPR. The CPUC and Energy Commission staffs request expedited treatment for the CAISO reforms. A broader state-wide transmission planning process in California should be encouraged and be recognized as a "regional" process provided that it meets applicable planning principles. Finally, the staffs support the proposed requirement that regional planning processes consider and evaluate both transmission *and non-transmission* measures to efficiently meet needs.

Public Policy Driven Transmission Projects

FERC proposes to require that local and regional transmission planning processes explicitly provide mechanisms for consideration of State public policy requirements. FERC reasons that this might increase the proportion of transmission constructed pursuant to proactive planning as opposed to being triggered by individual generation interconnection requests. The CPUC and Energy Commission staffs support this proposal. Factoring public policy priorities and goals into the transmission planning process has been a major focus of recent planning reforms in California, and is reflected in the CAISO planning process reform proposal currently before FERC. At a minimum the transmission planning process must prioritize California's renewable goals, the energy loading order, and distributed and non-emitting resources.

In response to the FERC NOPR at paragraph 70[1], the CPUC and Energy Commission staffs support a requirement that state policy goals and objectives need to be incorporated into all transmission planning processes within the Western Interconnection. In varying degrees this is occurring in studies underway in the West already. In addition, load and resource assumptions for these processes should be driven by the Western Electricity Coordinating Council, not the FERC regional planning entities.

Avoiding Undue Discrimination against Non-incumbent Transmission Developers

[1] FERC NOPR paragraph 70 reads in part: "We seek comment on any issue of interest or concern related to the requirements proposed in this section of the Proposed Rule. In particular, we seek comment as to whether public policy requirements established by state or federal laws or regulations should be considered in the transmission planning process."

FERC proposes eliminating provisions that establish a Right of First Refusal for incumbent transmission providers with respect to facilities that are included in a regional transmission plan. FERC reasons that giving incumbent transmission owners a Right of First Refusal to build transmission projects may unduly discriminate and discourage participation by non-incumbents in the planning process. FERC proposes to establish clear and nondiscriminatory criteria regarding eligibility to propose and build transmission projects and also regarding the factors and process for evaluating proposals and selecting winners. FERC also proposes allowing independent transmission developers to recover their costs through normal regional cost allocation methods if they fully participate in the planning process. Incumbent transmission owners would still be obligated to construct a needed project if no one else comes forward.

The CPUC and Energy Commission staffs support this proposal, with qualifications. In a recent CAISO stakeholder process, the CPUC advocated eliminating the Right of First Refusal except in limited cases, such as where a transmission project relies significantly on an incumbent's existing facilities. Whereas FERC proposes a rather specific process for dealing with project proposals, the CPUC and Energy Commission staffs recommend allowing some leeway for transmission providers to propose an alternative process so long as it is non-discriminatory, transparent, and efficient.

Proposed Interregional Planning Reforms

FERC proposes to require that each public utility transmission provider coordinate with transmission providers in neighboring planning regions as part of the regional transmission planning process. Coordination would be reflected in interregional planning agreements incorporated into transmission provider tariffs. FERC expresses willingness to be flexible but proposes a few mandatory elements that must be included in interregional planning agreements, the most important of which is a formal procedure to identify and jointly evaluate interregional transmission projects. Potential projects would need to be proposed within each region and be jointly studied by those regions via coordinated review. Planning agreements would have to be included in each region's approved transmission plan in order to be eligible for interregional cost allocation.

The CPUC has previously supported interregional coordination since it would facilitate California's energy goals. The CPUC and Energy Commission staffs support FERC's stated willingness to be flexible and consider unique circumstances in different geographic areas, but also comment on the following issues:

1. The expanding complexity and scope of planning processes, meetings and schedules is already straining participant resources, particularly among states and NGOs. What FERC is proposing has the potential to increase demands on stakeholder resources beyond what is physically or financially possible. FERC must take limited stakeholder resources into account.

2. Rules pertaining to planning agreements and coordinated review of interregional projects must not diminish state control by shifting decision-making authority to FERC.
3. Any "regional plans" that potentially include interregional projects should allow for changing needs, circumstances, and priorities.

For the most part, FERC has already established a positive and sustainable framework necessary to support regional transmission planning. New FERC rules should not undermine the progress underway in the West in transmission planning and development.[2] In particular, we urge that any final rule developed for the Western Interconnection explicitly recognize and incorporate the WECC Regional Transmission Expansion Planning (RTEP) project and products funded by the U.S. Department of Energy, such as the interconnection-wide 10-year plan to be filed by September 2011.[3]

Cost Allocation

FERC proposes to require that every public utility transmission provider include in their regional transmission plans a method or set of methods for allocating the costs of new transmission facilities. FERC expresses concern that unresolved cost allocation issues may be a major bottleneck in transmission development, especially on an interregional basis. FERC proposes that such cost allocation methods apply the cost causation principle such that costs are allocated in at least approximate proportion to transmission benefits received, even where beneficiaries do not volunteer to share in costs, and also to require that those receiving no benefits not be allocated costs.

The NOPR sets out separate cost allocation requirements for intraregional (e.g., within the CAISO footprint) versus interregional transmission projects. In particular, cost allocation for interregional projects must be based at least on bilateral agreements among adjacent planning regions, and may be based on multilateral agreements. FERC also states that the costs of interregional projects should not be allocated to those regions that do not benefit from the project. If affected transmission providers and their respective planning regions are unable to develop FERC-approved intraregional cost allocation

[2] Significant new transmission has been built and is being planned in the Western Interconnection. This reflects the recent analyses of transmission needed to serve growing loads and to move remote renewable generation to loads. However, conditions are constantly changing requiring a regular re-examination of transmission needs. For example, today we are seeing reduced loads due to the recession and lower than expected natural gas prices which favor gas generation to serve new loads. These changing factors are being incorporated into ongoing transmission planning processes.

[3] For example, the final rule should: 1) use the correct terminology applicable in the Western Interconnection (regional is interconnection-wide, sub-regional is the 8 (not 4) Sub-regional Planning Groups represented as voting members on the SPG Coordination Group); and 2) require all SPGs to include the "Common Case" as one of the cases they run in their study cycles and describe results in their Plans (this is a case that is internally consistent, uses state and stakeholder-vetted assumptions for the region, and is compliant with statutory Renewable Portfolio Standards.

methodologies six moths after closure of the instant proceeding, or interregional methodologies within twelve months, FERC would develop the methodologies.

With regard to intraregional cost allocation methodologies, the CPUC and Energy Commission staffs support the cost allocation methodology presently used by the CAISO, which essentially rolls into transmission rates the cost of approved transmission projects.

Cost allocation for interregional transmission projects is more complicated and problematic, and is certainly not yet fully resolved. The preferred approach for allocating costs of interregional projects is the traditional western approach involving voluntary collaboration and cost sharing among beneficiaries, such as when accessing relatively large scale remote resources. Another voluntary and potentially useful approach to be cited is the merchant approach in which a transmission project is funded by subscription to the project rather than via rolled-in rates.

Finally, the CPUC and Energy Commission staffs emphasize the need for FERC to provide maximum flexibility with regards to any proposed bilateral or multilateral approaches to cost allocation beyond the two approaches mentioned above.